

**Montana Fish, Wildlife & Parks****Total Taxes Paid by County Report**

2008

LND30801

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County	SENATE AGRICULTURE EXEMPT 14 DATE 2-19-09 SB 478	Total Tax
ANACONDA-D.L. COUNTY TREASURER		\$56,728.59
AUGUSTA WATER AND SEWER DIST		\$0.00
BEAVERHEAD COUNTY TREASURER		\$25,062.88
BIG HORN COUNTY TREASURER		\$2,836.01
BIG HORN LOW LINE DITCH CO		\$0.00
BILLINGS BENCH WATER ASSN		\$0.00
BROADWATER COUNTY TREASURER		\$365.37
BUTTE-SILVER BOW COUNTY TREASU		\$12,448.46
CARBON COUNTY TREASURER		\$1,689.56
CARTER COUNTY TREASURER		\$0.00
CASCADE COUNTY TREASURER		\$15,192.08
CHOUTEAU COUNTY TREASURER		\$722.49
CITY OF BOZEMAN		\$6,969.22
CLARK CANYON WATER SUPPLY		\$0.00
CROW INDIAN RESERVATION		\$0.00
CUSTER COUNTY TREASURER		\$654.16
DAWSON COUNTY TREASURER		\$1,333.18
FALLON COUNTY TREASURER		\$121.71
FERGUS COUNTY TREASURER		\$10,380.66
FLATHEAD COUNTY TREASURER		\$27,628.13
GALLATIN COUNTY TREASURER		\$40,575.20
GRANITE COUNTY TREASURER		\$92.51
HILL COUNTY TREASURER		\$1,510.42
JEFFERSON COUNTY TREASURER		\$1,965.51
JUDITH BASIN COUNTY TREASURER		\$5,701.34
LAKE COUNTY SOLID WASTE MGMT		\$0.00
LAKE COUNTY TREASURER		\$74,047.43
LEWIS & CLARK COUNTY TREASURER		\$47,553.00
LINCOLN COUNTY HEALTH DEPT.		\$0.00
LINCOLN COUNTY TREASURER		\$9,494.53
MADISON COUNTY TREASURER		\$18,448.55
MEAGHER COUNTY TREASURER		\$1,706.20
MINERAL COUNTY TREASURER		\$2,685.65
MISSOULA COUNTY TREASURER		\$25,576.77
PARK COUNTY TREASURER		\$5,457.40
PHILLIPS COUNTY TREASURER		\$458.63
POWDER RIVER COUNTY TREASURER		\$0.00
POWELL COUNTY TREASURER		\$12,660.56
RAVALLI COUNTY TREASURER		\$9,579.34
RICHLAND COUNTY TREASURER		\$9,255.72
SANDERS COUNTY TREASURER		\$3,963.26
STILLWATER COUNTY TREASURER		\$2,264.28
SWEET GRASS COUNTY TREASURER		\$549.87
TETON COUNTY TREASURER		\$26,060.91
TREASURE COUNTY TREASURER		\$3,707.67
USDI BUREAU OF INDIAN AFFAIRS		\$0.00
VALLEY COUNTY TREASURE		\$5,372.16
WHEATLAND COUNTY TREASURER		\$967.61
YELLOWSTONE COUNTY TREASURER		\$49,993.19
		\$521,780.21

For the period of the 2002-06 calendar years:

1. How many acres of conservation easements did FWP acquire?  
122,606 acres in 12 transactions
2. How many acres of fee title land in blocks greater than 50 acres did FWP acquire?  
19,270 acres in 24 transactions
3. How many acres of fee title land in blocks of 50 acres or less did we acquire?  
411 acres in 31 transactions

For the period of the 2007-08 calendar years:

1. How many acres of conservation easements did FWP acquire?  
8,934 acres in 11 transactions
2. How many acres of fee title land in blocks greater than 50 acres did FWP acquire?  
14,312 acres in 14 transactions
3. How many acres of fee title land in blocks of 50 acres or less did we acquire?  
267 acres in 17 transactions

## Conservation Easement Directives USDA, Natural Resources Conservation Service

Following excerpts from the Directives Manual identify required language and provisions to be included in Conservation Easement contracts in order to qualify for federal funding.

The source is the official manual for Title 440 Programs: Part 519 – **Farm and Ranch Lands Protection Program**. (The USDA, Natural Resource Conservation Service eDirectives)

<http://directives.sc.egov.usda.gov> or  
<http://directives.sc.egov.usda.gov/viewDirective.aspx?id=1988>

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*It is recommended that property owners take a close look at these details prior to the signature of the conservation easement contract in perpetuity. Also it is very wise to have an attorney experienced in conservation easement law review the draft contract and interpret the requirements, watchful for possible ramifications and pitfalls.*

*The federal government has skillfully developed an intricate program, utilizing tax payer dollars, to provide appealing incentives for private property owners to relinquish management of their lands, while assuming all financial burdens on their property, including any legal expenses which might ensue. The interests of the federal government have been carefully protected in these transactions while locking in forever, control of property, ownership and overall operations and performance. Ultimately over time, full ownership by the government is almost assured with remuneration to the original property owner being far below market value, if not an actual significant financial loss and encumbrance.*

### **EXPLANATORY DETAIL OF SPLIT TITLE:**

*The easement holder (Grantee) holds title to the use and management of the land.*

*The landowner (Grantor) remains holder of title to the real property.*

*Easement Duration: All FRPP conservation easements are perpetual. (H, p 2)*

*Rulings are categorized below in order of relative importance and possible concern.*

*Clarice Ryan*

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## CONSERVATION EASEMENTS

M.440.519 – Subpart G – Amendment 31 – August 2006

**Conservation Easement General Information** (519.60 p. 1)

**Goals and objectives:** (A, pg. 1) protection of farm and ranch land from conversion to nonagricultural uses and/or protection of historical or archaeological resources on agricultural land.

**Acquisition Method:** (B, pg. 1) The United States may enter into a cooperative agreement with a State, Tribal, or local government entity or non-governmental organization to provide matching funds up to 50% of the purchase price, not to exceed appraised fair market value, for the purpose of acquiring easements to protect farmland from conversion to non-agricultural uses. The cooperating entity will carry out the actual

acquisition process, hold title to the easement, manage, monitor and **enforce the easements with the United States holding a reversionary interest.**

**Contingent Right:** (D. pg 17) In the event that the Grantee fails to enforce the terms of this Easement, as determined in the sole discretion of the Secretary of the United States Department of Agriculture (Secretary), the Secretary, his successors and assigns shall have the right to enforce the terms of the Easement through any and all authorities available under Federal or State law. Further, in the event that the Grantee attempts to terminate, transfer, or otherwise divest itself of rights, title, or interest in this Easement or extinguish the Easement without prior consent of the Secretary and payment of consideration as provided herein, then at the option of the Secretary, **all right, title, or interest in this Easement shall become vested in the United States of America** (The Contingent Right provision is required by the cooperative agreement.)

**Responsibilities of the Grantor:** The landowner is responsible for payment of all taxes, upkeep and maintenance of the property and any liability arising from personal injury or property damage occurring on the property. (k, pg 16)

**Liability & Indemnification:** Grantor shall indemnify, defend and **hold harmless the Grantee and the United States from any liability** resulting from Grantor's negligent acts, including, but not limited to, the release, use or deposit of hazardous substance on the property. (pg 16) **Particular language is needed to adequately protect the resource and the Government's property interest.**

*(New environmental rulings unknown at time of signature, incurring large mandated implementation costs must be adhered to as they may appear, forever. cr insert)*

**Costs of Enforcement:**

Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including reasonable costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this easement shall be borne by Grantor.

**(D) Recovering Costs,** (page 19 final statement)

The United States or the Department shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action. Legal action can take either or both of two forms:

- **Civil Action to prevent further easement violation or to collect monetary damages, and**
- **In especially egregious circumstances, criminal prosecution of the person who violates the easement, Federal Law, or regulation.**

*(No mention is made of justified law suits brought by the property owner against the Grantee when, almost assuredly, the case will be lost with all legal expenses being born by the Grantor for both sides. cr insert)*

## EASEMENT PROPERTY DEALINGS:

The cooperating entity and a non-profit organization or other eligible entity **may co-hold title to the easement/interest.**

**The United States, through CCC, may acquire the easement that has a pending offer from a State, Tribal, or local government entity or non-governmental organization.** For example, this option may be considered where the United States holds or will hold an easement on the adjacent land. (G, pg 2)

**Transfer of Easement:** Upon prior written consent from USDA, Grantee may transfer this easement to a public agency or non-profit organization . . (pg 17)

*(This includes potential state and tribal negotiations. An opportunity for tribes to reclaim historic lands? cr insert)*

**Extinguishment:** (D. pg 17) The easement **may only be terminated or extinguished by a court** of competent jurisdiction upon a request to terminate made by the Grantor, Grantee, and the USDA and after a finding by the court that the conditions or circumstances on or surrounding the Property have changed to such a degree that it has become impossible to fulfill the conservation purposes of the easement.

*(Suggest state legislation to over-ride federal rules and limitations to achieve possible contract nullification in the event property reverts to the County through default on taxes or for use of property for affordable housing. cr insert)*

**Condemnation:** (pg. 17) States do not have the power to condemn a Federal property interest. Consent of the Federal Government should be sought before a condemnation action proceeds. If the Federal Government consents to condemnation, **proceeds from condemnation would be owed to the USDA.** If the easement is extinguished/terminated or condemned, in whole or in part, then **Grantee and the USDA** are entitled to their **proportional share** each of \_\_\_\_percentage of gross sale.

*(The property owner, grantor, must demand clear statement in the contract as to the percentage worth (declared value) of the real property as opposed to the easement holder grantee. cr insert)*

## PROCEDURAL STATEMENTS:

**The Conservation Plan** (C. pg 4)

NRCS is responsible for assisting the landowner in developing an appropriate conservation plan. The easement holder is responsible for **enforcing** the terms of the

easement. **Failure of enforcement will result in USDA holding the easement or finding a suitable easement holder.** (C. p. 4)

**Determining Easement Price:** (F 7, pg 6)

Property appraisers shall be State Certified General Real Property Appraisers, or obtain a temporary practice permit. (C. p. 5)

Technical reviewers may enlist the help of **partner agencies** such as Forest Service, Rural Development, or Farm Service Agency staff appraisers.

**Title Insurance** (A, pg 10)

Title Review Requirements: Prior to purchasing an easement or other interest in land, all title evidence, such as public land records, **should** be reviewed to ensure that good and legally sufficient title in the property is obtained. NRCS State Managers should request a copy of the cooperating entity's policy on title standards. At a minimum, the cooperating entity shall ensure:

American Land Title Association (ALTA) title insurance will be issued for all acquisitions. The parcel will be free and clear of any and all encumbrances on the title except those that the Grantee and NRCS decide are acceptable.

Note: If any such encumbrances are allowed, they shall be **subordinated to the easement**, e.g. mortgages, farming leases, etc. Such subordination clauses will be included in the easement.

**General Guidelines for Easement Review** (519.64, pg 11)

**Construction of Buildings and other Structures.** (C. pg 14-15) The construction of any building or any other structure prohibited except in accordance with . . . a) New buildings and improvements to be used solely for agricultural purposes. b) The **existing** single-family dwelling and related structures (e.g., swimming pool, garage, etc.) located in the Farmstead Complex identified in the document \_ . . , may be repaired, reasonably enlarged, and replaced within the Farmstead Complex. No additional single family dwellings may be built anywhere on the Property. The building of **additional** single family dwellings should be prohibited. A limited exception, upon approval of official request, may be made for landowner's children with right of construction terminating upon death of the children.

New buildings and improvements are to be **used solely for agricultural purposes.** No new roads may be constructed except unpaved roads for agricultural operations on the property. (d. pg 15)

*(This would limit the appeal for the purchase of CE encumbered land by wealthy urbanites seeking open space setting with construction of prestige home. cr insert).*

**Subdivision:** (f. pg 15) The subdivision, partition, or conveyance of the Property into two or more parcels is prohibited.

**Mining:** (g. pg 15) Mining or extraction of soil, sand, gravel, oil, natural gas or other mineral is prohibited, except that Grantor may extract soil, sand, and gravel solely for a permitted use on the Property in a manner consistent with the conservation purposes of this deed, minimal in scope and impact, and not exceeding \_\_\_\_ (a defined acreage or area should be specified in this provision. . . .)

**Conservation Plan:** (i. pg 15) The Grantor, his heirs, successors, or assigns, shall conduct all agricultural operations in a manner consistent with a **conservation plan** prepared in consultation with the Natural Resources Conservation Service (NRCS) and approved by the Conservation District.

**Rights of Grantee:** (C pg 14) Include protection of the conservation values of the Property; ability to periodically monitor compliance on the Property; **ability to enforce terms of the easement.** The USDA's **right to inspect** conservation plan compliance . . . the government's Contingent Right, a clause **required** under all FRPP cooperative agreements, . . .

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**The following is excerpt from an actual Conservation Easement contract incorporating exact terminology traditionally used to meet federal requirements for funding:**

"Grantor shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including responsibility for the control of noxious weeds in accordance with Montana law. Grantor shall pay any and all taxes, assessments, fees, and charges levied by competent authority on the Property, except any tax or assessment on this Easement herein granted. Any lawful tax or assessment on this Easement shall be paid by the Grantee. Grantor shall also be responsible for and shall bear all costs associated with ensuring compliance with all federal, state and local laws, regulations, rules, and ordinances."

*(Keep in mind that such legislation is continually on the increase especially as related to environmental issues, endangered species, restoration demands, etc. Also fire-fighting, as an example, will be the complete financial responsibility of the Property owner. cr insert)*